

## **CHECKLIST FOR 8(b)(1)(A) Allegations<sup>1</sup>**

### **I. 8(b)(1)(A) Grievance-Handling Allegations**

#### **A. Preliminary for all grievance-handling DFR allegations**

1. Verify the CP is a member of the bargaining unit
2. Ask what the bargaining unit is
3. Ask for a copy of the CBA
4. Get basic information such as job, rate of pay, supervisor

#### **B. Conduct alleged to violate the duty of fair representation**

1. What was the conduct? (e. g. failure to file a grievance, failure to arbitrate, conduct at arbitration, etc.)
2. When did conduct occur?
3. What was the grievance about? Get enough information about the subject matter of the grievance to assist in evaluating the Union's conduct and determine the merits of the grievance. (E.g. if it was a discharge; explain what the employee was allegedly discharged for and whether the employee admits or denies the conduct.)
4. Ask for a copy of the grievance
  - a) What efforts did CP make to file the grievance?
  - b) How does the CP know if a grievance was filed?
5. What was the Employer's position on the grievance?
6. What exactly did the Charging Party ask the Union to do? Who did the CP ask and when? How did the CP follow up with the Union or the Employer?
7. Were there any witnesses to the CP's request to the Union?
8. What did the Union do in response to the CP's request?
  - a) Conduct investigation; request information; talk to the ER, etc.
  - b) Status of the Union actor – steward, officer, paid union rep?

#### **C. Charging Party's union membership and activity?**

1. Union member? If yes, how long?

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<sup>1</sup>

This checklist is intended as an aid to identify some key areas to cover in an affidavit and is *not* a comprehensive list of questions or issues. Other areas to include in the affidavit will be determined by legal research and by responses to the items in the checklist.

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2. Union or protected activity?
  - a) Filed grievances – if yes, when and what happened to them?
  - b) Ran or campaigned for union office or campaigned for someone running for a union office or position
  - c) Complaints to the International Union or a Government agency or other outside group about the Union or its officers
  - d) File internal Union charges?
  - e) Any other evidence of conflict or hostility between CP and Union?
3. Union knowledge of Union/protected activity by CP
4. CP's reason why the Union would not want to represent CP properly *and* the basis for that theory
- D. Evidence of disparate treatment of grievance (whether Union treated others differently or the same way)**
- E. Evidence of motive (statements made by Union officials to CP, the Employer or others about why it was not filing, processing or arbitrating the grievance)**
- F. Union's likely defense (e.g., How reasonable or unreasonable was Union's decision or action in light of the grievance's merits?)**
- G. Current status of the grievance, including any internal union appeal procedures**

## II. 8(b)(1)(A) Statements by Union<sup>2</sup>

- A. Where the allegation is a statement made by a union representative or agent, statements from witnesses should include:**
  1. What was said and by whom (steward? officer? paid union rep?)
  2. The circumstances under which it was said
  3. Corroborating witnesses?
  4. Date, time and place of statement
  5. Facts to show that the person making the statement was an agent of the Union

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<sup>2</sup> Evidence concerning oral threats by union agents involve the same techniques used in 8(a)(1) and (3) investigations. The exact words used by the union agent may be more important and particular effort should be made to be precise in seeking this evidence.

**III. Remedies – How does the Union communicate with its members?**

- A. Email?**
- B. Newsletters?**
- C. Website?**